

**HEARING OFFICER, CAREER SERVICE BOARD, CITY AND COUNTY OF DENVER,
STATE OF COLORADO**
Appeal No. 260-00

FINDINGS AND ORDER

IN THE MATTER OF THE APPEAL OF:

Appellant: **DANNY MEDINA,**

And

Agency: **Denver Health and Hospital Authority, Denver Health Medical Center.**

Appellant filed an appeal with the Career Service Board Hearing Officer on November 30, 2000. Upon review of the appeal, it appeared to the Hearing Officer that he might lack jurisdiction to consider this appeal, due to the Appellant's late filing of his first step grievance. The Hearing Officer issued a Show Cause Order on December 5th, requiring the Appellant to show cause as to why the appeal should not be dismissed.

Initially, the appeal was dismissed on December 27th for failure to respond. Through his representative, Mr. Roman Garcia, the Appellant filed a motion to reopen the appeal on the basis that the representative had not been sent a copy of the Show Cause Order. The motion was granted, the dismissal order set aside and the Appellant was permitted to file a response to the Show Cause Order.

The Appellant's response raised certain issues of fact that could only be determined with an evidentiary hearing. It also raised the issue of whether the Agency had the authority to either waive or extend the time for filing of the first level grievance. An evidentiary hearing was held on March 8, 2001. The hearing was limited to the issues of: 1) whether the Agency or someone on its behalf agreed to an extension of time for the Appellant to file his first level grievance and 2) whether the Agency had the authority to agree to such an extension.

The Hearing Officer has reviewed the file, the testimony presented, and the statements of counsel and now makes the following findings of fact, conclusions of law, and Order:

1. On October 16th, the Appellant received a written reprimand, which is now the subject of this appeal. Appellant's representative, Mr. Roman Garcia, met with Nathan Clark, the stock room supervisor and Pam Leonard, the Director of Materials Management. At that time there was also a discussion with the agency head, Dr. Patricia A. Grabow. The discussion centered on the reprimand and the need for further review and investigation by Mr. Garcia on Appellant's behalf. According to Mr. Garcia, during the discussion he was told that the Agency

agreed that the time for filing a grievance of the reprimand would be extended to October 31, 2000.

2. The witnesses for the agency admit that a general discussion occurred regarding Garcia's need for more time in order to further investigate the reprimand. They admit that the agency agreed to allow Garcia more time to investigate, but deny that any specific discussion occurred about extending the time for filing the grievance. Ms. Leonard admits that she agreed to extend the time to meet again, because she was going out of town on a business trip. She denies any discussion regarding extending the time for filing the grievance.
3. Career Service Rules are clear that a grievance must be filed with the employee's supervisor within ten (10) days of notice of the action taken.¹ In this case, Appellant's first level grievance was due ten days after October 16th on October 26th. He did not file it until October 31st.
4. Appellant asserts that the agency granted him an extension of the time to file a grievance. Even if the evidence clearly established this to be the case, the rules do not permit the agency to extend the deadline. The agency does not have such authority. As counsel for the agency points out, it is well settled under Colorado case law, that an express or implied contract that is contrary to the city charter or ordinance is unenforceable. *Chellsen v. Pena*, 857 P2d. 472 (Colo. App. 1992). The same reasoning applies here. The agency does not have legal authority to extend the time for filing of a grievance. Moreover, when dealing with a governmental agency, one is charged with knowledge of its limitations and restrictions. *Chellsen v. Pena*, supra.

¹ CSR § 18-12 2) provides as follows:

Section 18-12 Grievance procedure

If a work related dispute was not resolved through alternative dispute resolution or if alternative dispute resolution was not previously attempted and a career service employee has a grievance as defined in Section 18-10 (a) of this rule, the employee may file a grievance according to the following procedures:

* * *

Filing with Supervisor: **The employee shall present a grievance to the immediate supervisor within ten (10) calendar days after notification of the action which gives rise to the grievance.** The supervisor shall consider the grievance and within ten (10) calendar days give the employee dated, written notice of a decision. The immediate supervisor's written decision shall contain a certificate of mailing or certificate of hand delivery which indicates the date the supervisor's decision was mailed or hand delivered to the employee. The period of time shall be computed in accordance with subparagraph 19-22 a) 2). [Emphasis added].

5. The Hearing Officer therefore concludes that the agency had no authority under Career Service Rules to extend the deadline. Therefore the Appellant's grievance was due on October 26th, 2000.
6. Appellant also claims that the agency has waived its right to object to the late filing of the grievance, because the agency did not raise the objection in its response to the grievance. It is true that the agency did not raise this issue in its first level response. Apparently the agency did not respond at the second level and therefore did not object to the late filing there, either.
7. However, this contention ignores the explicit requirements of the rule that vests the Hearing Officer with jurisdiction in the first place. CSR § 19-10 d) requires that before the Hearing Officer may take jurisdiction of a workplace dispute involving a grievance, the employee must first comply with the requirements of the grievance process.² As already noted, rule 18-12 of the grievance process requires the filing of the first step grievance within ten days. Thus, timely filing of the grievance is a prerequisite to the Hearing Officer's jurisdiction. Moreover, such a waiver by the Agency would be tantamount to an express extension, which, as already noted, cannot be given by the agency under Career Service Rules.
8. Appellant also appears to argue that pursuant to CSR § 18-11,³ the time limits for filing a grievance may be suspended if the employee desires to engage in

² CSR 19-10: Actions Subject to Appeal

An applicant or employee who holds career service status may appeal the following administrative actions relating to personnel.

* * *

- d) Grievances resulting in rules violations: Any grievance which results in an alleged violation of the Career Service Charter Amendment, or Ordinances relating to the Career Service, or the Career Service Personnel Rules. **The grievance must be in conformance with and processed pursuant to the requirements of Section 18-12 Grievance Procedure.** The appeal form must state with specificity which career service charter amendment, ordinance or career service rule(s) are alleged to have been violated. An appeal may be dismissed if the appellant fails to cite the alleged rule violations(s). [Emphasis added]

* * *

³ Section 18-11 Alternative dispute resolution program

- A. Alternative dispute resolution may be requested by any City and County of Denver employee who desires assistance in resolving a work related dispute with another employee, supervisor, or manager. If the work related dispute involves a grievance as defined in section 18-10 (a) of this rule, time limits for filing a grievance are suspended until the mediation has been permanently adjourned. **If there is not agreement to engage in alternative dispute resolution and the employee wants to pursue a grievance, the employee must file a grievance pursuant to the deadlines contained in section 18-12 of this rule.** If the work related dispute does not meet the definition of

alternative dispute resolution (ADR). However, in this case there is no credible evidence that the employee ever requested to be assisted through the ADR program. Nor was there ever any agreement by the Agency to participate in ADR. Simply indicating a desire to negotiate the disciplinary action is not sufficient to trigger a suspension of the deadlines under the rule. This appears to be the only exception under the rules where the grievance deadlines may be suspended. However, it is not applicable here, where no such request for ADR was ever made or agreed to. Moreover, the rule is explicit that if there is no agreement to mediate, there must be strict adherence to the deadlines for filing of the grievance.

9. The Appellant next contends that by meeting with the representatives of the agency on October 23, including his immediate supervisor, he in effect timely "filed" his grievance. However, this contention ignores the specific requirements of CSR § 18-12 1 which requires that grievances be presented in writing and shall be dated.⁴ The first time that appellant fulfilled this requirement was on October 31st.
10. The rules are clear and unequivocal in these areas. An employee who chooses to ignore them in favor of further investigation or negotiations does so at his peril. The better practice is to strictly comply with the requirements of the grievance process while continuing the investigation or requesting ADR. Anything less may, as here, divest the Hearing Officer of jurisdiction.

Conclusion

The Hearing Officer determines and concludes that Appellant filed his first step grievance untimely. The date of notice of action, the written reprimand, is October 16, 2000. Pursuant to CSR § 18-12 2), Appellant's first step grievance was due on or before October 26, 2000. Appellant filed his first step grievance on October 31, 2000, some 5 days late. The Hearing Officer therefore lacks jurisdiction to consider this grievance further.

grievance as contained in section 18-10 (a), an employee may request alternative dispute resolution. [Emphasis added].

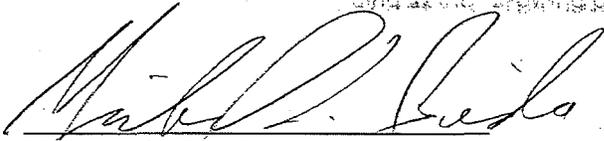
⁴ Section 18-12 Grievance procedure

If a work related dispute was not resolved through alternative dispute resolution or if alternative dispute resolution was not previously attempted and a career service employee has a grievance as defined in Section 18-10 (a) of this rule, the employee may file a grievance according to the following procedures:

1. Form: **The grievance shall be presented in writing and shall be dated.** It shall include the name and address of the grievant, the action which is the subject of the grievance, the date of the action, and a statement of the remedy sought. The grievance form shall have a certificate of mailing or certificate of hand delivery which indicates the date of the grievance was placed in the mail or was hand delivered to the immediate supervisor. [Emphasis added].

It is therefore ORDERED, that this appeal is hereby DISMISSED, with prejudice.

Dated this 23 day of
April, 2001



Michael L. Bieda
Hearing Officer
Career Service Board

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